

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ROBERT ANDREW KIRKHAM,

CASE NO. 2:22-cv-01637-LK

Plaintiff,

ORDER ADOPTING REPORT AND RECOMMENDATION

BRANDON GLOOR et al.,

Defendants.

This matter comes before the Court on the Report and Recommendation (“R&R”) of
Judge David W. Christel, recommending dismissal without prejudice of pro se Plaintiff
Andrew Kirkham’s complaint filed under 42 U.S.C. § 1983. Dkt. No. 11; *see* Dkt. No. 4.
&R further recommends denying as moot Mr. Kirkham’s pending motion for appointed
counsel, Dkt. No. 5, and that dismissal of this case count as a “strike” against Mr. Kirkham under
U.S.C. § 1915(g) because Mr. Kirkham’s complaint is being dismissed, at least in part, on the
basis that it fails to state a claim. Dkt. No. 11 at 2; *see* Dkt. No. 6 at 2–3. Mr. Kirkham, who is
proceeding *in forma pauperis*, has not filed any objections to the R&R. Indeed, the record indicates
he was released from Snohomish County Corrections Center in December 2022 and has since

1 failed to update his mailing address in contravention of Local Civil Rule 41(b)(2) and despite
2 Judge Christel's January 6, 2023 Order directing him to do so. *See* Dkt. Nos. 7–10, 12; Dkt. No.
3 11 at 1–2. Mr. Kirkham has also failed to timely file an amended complaint curing his deficient
4 pleadings in accordance with Judge Christel's November 28, 2022 Order. Dkt. No. 6 at 4.

5 The Court reviews findings and recommendations “*if objection is made*, but not otherwise.”
6 *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc) (emphasis original)
7 (“Neither the Constitution nor the statute requires a district judge to review, *de novo*, findings and
8 recommendations that the parties themselves accept as correct.”); *see also* 28 U.S.C. § 636(b)(1);
9 Fed. R. Civ. P. 72(b)(3).

10 Having reviewed the R&R and the remainder of the record, and in the absence of any
11 objections by Mr. Kirkham, the Court hereby finds and ORDERS:

- 12 1. The Court ADOPTS the Report and Recommendation, Dkt. No. 11.
- 13 2. This case is DISMISSED without prejudice.
- 14 3. Mr. Kirkham's Motion for Court-appointed counsel is DENIED as moot, Dkt. No. 5.
- 15 4. This dismissal constitutes a strike against Mr. Kirkham under 28 U.S.C. § 1915(g). *See*
16 *Lomax v. Ortiz-Marquez*, 140 S. Ct. 1721, 1724–25 (2020); *Andrews v. King*, 398 F.3d
17 1113, 1121 (9th Cir. 2005).
- 18 5. The Clerk is directed to send copies of this Order to Mr. Kirkham and to Judge Christel.

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20 Dated this 3rd day of April, 2023.

21
22 
23 Lauren King
24 United States District Judge